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OF COUNTY COMMISSIONERS  
MIAMI-DADE COUNTY, FLORIDA**

**MEMORANDUM**

Amended  
Special Item No. 1

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**TO:** Honorable Chairman Dennis C. Moss  
and Members, Board of County Commissioners

**DATE:** March 23, 2009

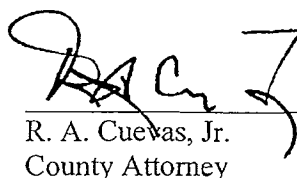
**FROM:** R. A. Cuevas, Jr.  
County Attorney

**SUBJECT:** Resolution relating to  
the baseball stadium  
agreements

**Resolution No. R-318-09**

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The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Bruno A. Barreiro, and Co-Sponsors Vice-Chairman Jose "Pepe" Diaz and Chairman Dennis C. Moss.

  
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R. A. Cuevas, Jr.  
County Attorney

RAC/jls

# Memorandum



**Date:** March 23, 2009

**To:** Honorable Chairman Dennis C. Moss  
and Members, Board of County Commissioners

**From:** George M. Burgess  
County Manager

**Subject:** Baseball Stadium Agreements

Amended  
Special Item No. 1

A handwritten signature in dark ink, appearing to read "G. Burgess", written over the printed name of the County Manager.

## Changes from February 13, 2009, Manager's Memorandum

On February 13, 2009, the Board of County Commissioners canceled a previously scheduled Special Meeting of the Board following unexpected delays to the City of Miami's consideration of the Baseball Stadium Agreements. Those agreements were provided to the Board of County Commissioners approximately three weeks earlier and remain substantially unchanged. In the interim, however, continued negotiations have produced some substantive changes and corrections of a number of scrivener's errors. In no case was the County's position weakened, and in many cases it was notably strengthened. Following is a summary of the substantive changes agreed to since the previous distribution of the agreements. Explanation of those changes is also noted in the appropriate sections of the body of this memorandum.

*The Resolution accompanying this item has been amended to include a provision making the effective date of the Resolution conditioned upon the approval by the City Commission of the bid waiver necessary to retain Hunt/Moss to manage the Public Infrastructure Work. The decision to recommend Hunt/Moss as the Public Infrastructure Construction Manager for the project provides an important and significant benefit to the County and the City because it significantly reduces the risk exposure to governmentally caused overruns by allowing for a single Construction Manager to manage and coordinate the scheduling and performance of the public infrastructure work. As such, I am not willing to recommend approval of this project unless and until the City of Miami obtains the required affirmative vote of four-fifths of the City Commission's membership.*

*The Construction Administration Agreement (CAA) has been amended to incorporate agreed-upon changes to Sections 5.2(b), addition of Sections 5.2(f) and (g), changes to 11.1.1, and minor changes to Exhibit J as follows:*

*The changes to Section 5.2(b) include the following: a) Inclusion of a City designee on the The Review Committee, which sets recommended goals for the participation of Small Business Enterprises (SBE), Community Small Business Enterprises (CSBE) and the Community Workforce Program (CWP). The City's designee would only participate in the review of projects directly related to the ballpark project and related public infrastructure work; b) language requiring that CSBE's and SBE's that have an actual place of business in the County, including the County's Designated Target Areas (DTA) and City-designated Neighborhood Development Zones (NDZ) be given equal opportunity to compete for business in the construction of the Baseball Stadium Project; c) language requiring the Stadium Developer and Construction Manager to employ a comprehensive outreach program to identify, recruit, educate and assist small and local businesses for the Baseball Stadium Project; d) language requiring that the Construction Management Agreement's prompt-payment language require the Construction*

*Manager to pay all prime contractors within five (5) business days of its receipt of payment, and that each prime contractor pay its subcontractors and/or suppliers within five (5) business days, and that CSBE's and SBE's be paid within 48 hours, as required by County ordinance; e) language clarifying that the current CWP goal is 10 percent, and that, if revised, any modification will be established by The Review Committee in accordance with the same procedure used for establishing CSBE and SBE goals; f) language requiring the Stadium Developer to cause the Construction Manager to use diligent efforts to recruit workers from both and the County's DTA's and the City's NDZ's to satisfy the CWP goal, subject to the CWP Ordinance; and g) language creating the Construction Outreach Program, which is designed to increase small-business participation during the construction of the baseball stadium with a view to supporting the aspirational small-business and local hiring goals. Those goals aspire to have as many local workers and local firms as reasonably practical and aspire to have at least 50 percent of the workers residents of Miami-Dade County, 20 percent of which are residents of the City of Miami, and to aspire to have at least 35 percent of the firms hired as subcontractors on the project be firms located within Miami-Dade County.*

*Section 5.2(f) was added to the CAA to require the Stadium Developer to require the Construction Manager to include in each bid package provisions relating to criteria for utilization of apprentices and trainees from certified Apprenticeship Programs.*

*Section 11.1.1 was amended to clarify that, prior to July 1, 2009, neither the team, the City nor the County may exercise the Termination for Convenience once the County has executed a final bond purchase agreement and/or completed a competitive sale with respect to the County Bonds backed with Convention Development Tax (CDT) and Professional Sports Franchise Facility Tax (PST)/Tourist Development Tax (TDT).*

*Exhibit J, related to the Sales Tax Procurement Procedures, incorporated a change requested by the State Department of Revenue to clarify that the County would be directly invoiced by vendors to purchases made under the program.*

*Exhibit P was added to depict Miami-Dade County's Designated Target Areas and City of Miami's Neighborhood Development Zones.*

*The Operating Agreement has been amended to incorporate agreed-upon changes to Section 6.3 and Section 7.1(a), inclusion of a new Section 7.1(f), and changes to Section 7.2 as follows:*

*Section 6.3 related to Stadium Event Proceeds further improves the benefits to the County by increasing the number of opportunities whereby additional revenues would be generated for, and deposited to, the Capital Reserve Fund.*

*Section 7.1(a) adds language requiring the Operator or the Team to make an annual financial contribution through the Team Foundation in the amount of \$500,000. For each of the first 7½ years of the agreement, \$100,000 of this amount shall be paid to the Parks Foundation of Miami-Dade County, Inc. and \$25,000 to the City's Heart of Our Parks Fund for baseball-related youth and community-based programs.*

*Section 7.1(f) was added to the Operating Agreement to provide that the Team shall build or improve a total of 39 baseball fields in Miami-Dade County, including at least three (3) in each Miami-Dade County Commission district and at least two (2) within each City of Miami*

***Commission District. The Team agrees to build or improve at least one baseball field each year of the Term.***

***Section 7.2 was amended to expand language related to the Team's small business outreach program to state that the Stadium Operator will participate in Major League Baseball Diverse Business Partners Program and jointly develop with the County and the City the Outreach Program. The Outreach Program will be designed to increase small-business and local resident participation during the operation of the baseball stadium, with a view to supporting aspirational goals of awarding 15 percent of contracts to small businesses located in the DTA's and NDZ's, and the aspirational goal of 25 percent of stadium workers residents of the DTA's and NDZ's, and the aspirational goal of at least 50 percent of stadium workers residents of Miami-Dade County, 20 percent of whom shall be City of Miami residents. The County Manager and City Manager will present the final terms of the Outreach Program to the Board and City Commission for approval.***

**The City Parking Agreement includes three new definitions in Article I (to support a newly added Section 4.3), and includes new language in Article II and Section 4.8 as follows:**

***Article II adds language relating to a cap on the \$94 million estimated cost of the Parking Facilities, further states that ad-valorem revenues will not be used to fund its construction, and, if the cost does exceed \$94 million the number of parking spaces will be reduced accordingly.***

***Section 4.8 also required the inclusion of similar language on the ability to reduce the number of spaces.***

***Section 4.3 has been added to establish that the Construction Manager for the Parking Facilities shall be required to adhere to small business and local workforce goals and measures that mirror those of the County.***

**Sections 6 and 7 of the Non-Relocation Agreement were amended as follows:**

***Section 6, related to "Payment Upon Sale of Team," was amended to further increase both, the number of years the provision applies (from 7 years to 10 years), and, the potential maximum percentage payout (from 18% to 70%).***

***Section 7, related to "Annual Payment," was amended to clarify that the annual rent payment continues through the Term of the Operating Agreement.***

#### **Introduction**

At the February 21, 2008, meeting of the Board of County Commissioners, the Baseball Stadium Agreement (BSA) between Miami-Dade County (County), the City of Miami (City) and the Florida Marlins (Team) was approved. Incorporated into that approval was direction to staff to negotiate final agreements regarding the construction, operation and related issues for a ballpark for the soon to be Miami Marlins. We believe this proposed set of agreements is the best possible deal the County could negotiate at this time.

The attached Stadium Agreements are in substantially the same form as those contained in the binder you received on January 27, 2009, and the follow-up distribution prior to the Special Meeting scheduled (but never held) for February 13, 2009. There have been changes to correct scrivener's errors, section references, and other amendments, both substantive and minor in nature. Each Stadium Agreement

includes a cover sheet that describes the changes that occurred between the January 27 distribution and this distribution. In addition, the changes since February 13 were detailed above and are also described in the attached Supplemental Item No. 1.

The negotiations, conducted over the last 13 months, have produced a proposed deal that is better, stronger and safer for the County than was required by the terms of the BSA. The Team has increased its contribution to the project by nearly \$9 million. The County's exposure to overruns and other unexpected costs – while impossible to eliminate completely – has been dramatically reduced. The County and City will have broad access to use the stadium during the off-season without sacrificing any of the in-season promises made in the BSA. Staff secured twice as many donated tickets from the Team for non-profit groups, additional low-cost tickets for youth and senior-citizen fans, nearly 50 percent more public and non-profit use of suite seats, and additional opportunities for shared income from non-baseball Stadium Events. Stadium construction will incorporate Community Small Business Enterprise (CSBE), Small Business Enterprise (SBE) and Community Workforce Program (CWP) programs, including a full-time compliance monitor. Agreements for labor peace and division of off-duty police have been fully incorporated. The Team's payment to the County in the event of an ownership change has increased significantly, and the Team is obligated to donate \$750,000 to the Parks Foundation of Miami-Dade County, Inc., donate \$187,500 to the City's Heart of Our Parks Fund and build or renovate at least 39 public baseball fields across the County.

The plan we are considering has County support for the stadium funded with tourist taxes and with general obligation bond proceeds specifically approved by the voters for the Orange Bowl site. The County would also issue covenant to budget and appropriate debt that would be offset by annual rent payments from the Team. Unlike other jurisdictions that have funded new sports stadiums in recent years, we have not imposed any new taxes or raised existing ones to fund this project. But important changes to the global credit market and national economy have impacted the County's financing plans for the project. Staff has analyzed the revenue projections in great detail, looking at the newest available data. Financing of this magnitude is undeniably more complicated and potentially more costly than a more straightforward conventional financing. Like any deal of this scope and importance, the costs and risks should be weighed against the project and its rewards. These agreements have been structured to give the Administration and the Board more time to ensure credit markets have time to further improve over the coming months.

Today's global economic crisis and the collapse of the credit markets were not contemplated in February 2008. The ability to issue the bonds required to meet our funding obligations under these agreements is being monitored closely and analyzed by our financial advisors and financial staff. I have spent a great deal of time over the past three months working with our Finance Department, our financial advisors, our Chief Economist, as well as the banks interested in securing the financing for the Team. We have not only considered where the credit markets are today, but also where they potentially could be over the coming months. Additionally, I recently met with bankers from some of the nation's largest banks involved in sports facility financings (Citigroup, Bank of America, and J.P. Morgan), as well as Goldman Sachs, all of which are interested in doing business with the Team for their portion of the stadium funding. They indicated that there is an appetite in the marketplace for these types of financings, and that they could secure the Team portion of the financing even in today's market. Based on our research, I feel quite comfortable that the Team will be able to secure its portion of the stadium project debt.

In an abundance of caution, I specifically requested and all parties agreed to include a Termination for Convenience clause in the CAA that allows the parties to walk away from this deal prior to July 1, 2009. This gives the County more time to evaluate the market's appetite for public stadium debt, to consider

our local economy's continuing reaction to the national and global recession, to monitor the South Florida tourist economy during the busiest months of our yearly tourist season, to gauge any market reactions to federal economic stimulus initiatives, and to assess any adverse impacts on our funding plan resulting from the State legislative session that is now underway. The CAA provides that if by July 1, 2009, the County is able to issue bonds secured by Convention Development Tax (CDT) and Professional Sports Franchise Tax (PST)/Tourist Development Tax (TDT) revenue streams in an amount sufficient to fund \$304.6 million, the matter will not be brought back to the Board for consideration of termination of the Stadium Agreements. Such matter would be presented to the Board for action prior to the July 1 deadline. The significance of this date was to allow as much time as possible between approval of these Agreements and sale of the bonds to see what issues, if any, might impact the County during the State Legislative Session, to see what improvements may develop in the bond markets, to understand the impacts of the federal government's American Recovery and Reinvestment Act (ARRA), and to have the most current projections related to the performance of tourist taxes. While July 1 is the final opportunity to terminate without recourse, there is also a provision that allows the County and City to terminate prior to June 1 with a reduced cap on reimbursable interim costs (discussed further on Page 8). If we are able to issue all of the debt required and assuming the Termination for Convenience is not exercised for other reasons by any of the parties, we will then move forward with construction as planned. However, in no event may the City, the Team or the County exercise the Termination for Convenience once the County has executed a final bond purchase agreement and/or completed a competitive sale with respect to the County Bonds backed with tourist taxes. This improvement over the earlier version of the Agreements further protects the County's investment.

#### **Recommendation**

It is recommended that the Board approve the accompanying Resolution authorizing execution of the Stadium Agreements required for the design, operation, and construction of a new ballpark, public infrastructure work, and accompanying parking structures for the future Miami Marlins at the former Orange Bowl site. The Stadium Agreements include the Assurance, Non-Relocation, City Parking, Operating, and Construction Administration (CAA) Agreements. The CAA requires a two-thirds vote of the members present in order to select Marlins Stadium Developer, LLC, as the developer for the project, and to authorize the waiver of formal bid procedures for the purchase of the construction materials listed in Exhibit J of the CAA for the sales tax procurement program.

Additionally, following a public hearing, nine votes are required to waive formal bid procedures and select Hunt/Moss, a Joint Venture, the construction manager that has already been competitively selected by the developer to construct the stadium, to also perform the public infrastructure work subject to successful negotiations, and, in the alternative to select another licensed contractor to perform such work. Please be mindful that many of the protections described in this memorandum with respect to cost overruns are dependent upon the selection by the County and the City of Hunt/Moss as the construction manager for the public infrastructure and the successful negotiation and execution of a contract for that purpose. In the event Hunt/Moss is not selected by both the County and the City, the CAA provides for a renegotiation of the CAA to require the County and the City to select an architect and another appropriately licensed contractor to manage the design and construction of the Public Infrastructure, subject to Board approval. In this scenario, if the parties have not approved such amendment to the CAA, we will bring an item to the Board for consideration of termination prior to July 1<sup>st</sup>, 2009. However, while an alternative is provided in the CAA, as stated at the opening of this memorandum, we do not recommend moving forward with this deal unless Hunt/Moss has been approved as the Construction Manager for the Public Infrastructure Work.

The Operating Agreement requires a two-thirds vote of the members present in order to select Marlins Stadium Operator, LLC, as the operator of the stadium, and requires a public hearing pursuant to Section 2-1 of the Miami-Dade County Code, Rule 9.02 relating to naming of public facilities and allow for automatic approval or approval by the County Representative of a stadium name that meets the naming rights criteria listed in Section 4.7 of the Operating Agreement. Furthermore, it is in the best interest of the County to waive the provisions of Resolution No. R-130-06 requiring that all agreements be in final executed form before consideration by the Board.

### **Scope**

While the project will be located in District 5, the overall impact is countywide in nature.

### **Fiscal Impact/Funding Sources**

As was initially contemplated when the BSA was approved on February 21, 2008, the total construction cost of the baseball stadium is \$515 million. City and County combined public infrastructure, project management costs, and Leadership in Energy and Environmental Design (LEED) certification costs account for another \$29.5 million. The Team will contribute \$120 million, consisting of \$119 million for the construction of the stadium and \$1 million towards the public infrastructure costs for design, to be credited to the County's and the City's shared funding of infrastructure constructed by the Team, as well as making an annual rent payment of \$2.3 million beginning in the first stadium operating year (anticipated to be April 2012), escalating at two percent per year for at least 35 years. County funding for the stadium construction, infrastructure, LEED certification, and project management totals \$364.39 million including \$347.5 million for the stadium construction, \$10.837 million for public infrastructure hard costs, \$1.75 million for LEED certification, and \$4.3 million for the County's representative, project management and IPSIG expenses. The City will contribute \$25.6 million, including \$13.5 million for stadium construction and \$10.837 million for infrastructure and project management costs and \$1.75 million for its share of LEED certification. The City will also provide \$60 million toward the construction of four on-site parking garages and surface lots to provide approximately 5,500 parking spaces at an estimated cost of \$94 million. In the event the City's contribution is insufficient to provide the full number of parking spaces, the Agreements only require the construction of as many parking spaces as the \$94 million is able to yield. An item amending an interlocal agreement between the City and the County that helps support this funding is presented as a separate item on this agenda. The balance of the parking cost will be covered by contracted payments from the Team for use of parking spaces for home games. The City also contributed the land for the ballpark and associated garages and incurred demolition, clean-up and environmental costs associated with the Orange Bowl site.

The optimal financing plan developed has the County issuing debt supported by CDT, TDT, PST and non-ad valorem revenues, as well as funding from the Building Better Communities (BBC) general obligation bond program. It is anticipated that CDT bonds will be issued in an amount not to exceed \$81 million and PST bonds backed by a secondary pledge of TDT will be issued in an amount not to exceed \$245 million, including financing costs and assuming the County can secure a debt service reserve insurance policy or other reserve credit facility. Additional bonds/debt in the amount of \$39 million will be secured by a covenant to budget and appropriate legally available non ad valorem revenues annually for debt service. While not paid directly from the Team's rent payments, the annual debt service payments on such additional bonds/debt are anticipated to be offset by such rent payments. The BBC bond issuance will not exceed \$55 million (including financing costs), utilizing the \$50 million allocation for capital costs previously programmed for Orange Bowl renovations pursuant to Resolution R-1371-07 adopted on December 18, 2007. If TDT funds are used as a secondary pledge to make any PST debt service payments, the 20 percent share of TDT revenues dedicated to be spent by County ordinance within the boundaries of the City of Miami shall be used first. It is also important to note that these tourist taxes (CDT, TDT and PST) cannot be used for general government funding purposes,

such as social services, public safety, and public education. Due to pending litigation, the County had to secure a "no-merit" opinion from Bond Counsel prior to proceeding with this plan. Without such an opinion, none of the bonds would be marketable. In a typical bond transaction, the investors rely on an unqualified tax exempt opinion rendered by nationally recognized bond counsel. At the current time, the County's bond counsel has completed its analysis and is willing to issue a "no merit" opinion in connection with the issuance of the BBC Bonds, PST/TDT Bonds and CDT Bonds, provided there are no adverse changes in the law or in the case between now and the date on which each of the Bonds are issued. The County Attorney's office will issue a similar opinion. A second lawsuit was filed recently by two citizens alleging that the City and County violated the Sunshine Law in connection with the negotiations of the Stadium Agreements by each staff. This additional suit will have to be disclosed to potential bondholders in the offering documents used to market the bonds. It is not clear at this point what effect the no-merit opinion and this new litigation will have on the sale of the bonds. We intend to continue to monitor the economy closely over the coming weeks to ensure market conditions and tourist tax revenues provide the best possible timing for our efforts to borrow the funds for this project.

In addition to these financing proceeds, Water and Sewer funds will be utilized to fund water/wastewater eligible costs in the vicinity of the stadium project. CDT, TDT and PST revenues in excess of that required for debt service payments and necessary reserves, as well as interest earned on the proceeds of the tourist tax bonds and, if necessary, the BBC bonds, will also be used to support infrastructure and project management costs. Should BBC funding be necessary, an item approving a significant modification and the application of BBC bond proceeds and interest earnings will be brought to the Board for approval. Exhibit K to the CAA details the total project budget including both stadium construction and related infrastructure and project management costs.

While near-term tourist tax revenues are not anticipated to grow at levels experienced in recent years, at this time we feel comfortable that these revenue sources have the capacity to absorb the required debt. Our intent is to structure debt issuances to optimize the revenue streams over the next 30 to 40 years similar to existing County debt issues supported by these revenue streams. Supplement 2 to this item shows numerous conservative cash flow analyses for the CDT, TDT and PST revenue streams, along with our planned shortfall reserve and excess capacity. Historical year-to-year average growth since the inception of these taxes is 7.6% for the CDT, 6.14% for the TDT and 5.55% for the PST. As you can see, there remains limited capacity for other eligible projects including the New World Symphony. As market conditions change and tourist tax revenue projections are adjusted, we will update the Board. As mentioned before, a provision of the CAA allows for termination of the baseball stadium agreements prior to July 1, 2009 for the convenience of any party, including should the financial resources required to support this project not be obtainable. Once again, no party may terminate once the County has committed to the sale of bonds backed by tourist taxes.

This plan is certainly not the preferred scenario for any of the parties. For the Team, their initial timeline called for a June 1 groundbreaking that allowed for a 34-month construction schedule and an April 2012 opening. The termination provision discussed above pushes the construction start date back by one month. To ensure that April 2012 remains a possibility, work on the project will have to continue between now and the potential termination date and costs will be incurred by all parties, just as would be the case if the County had sold its bonds as of the approval of these agreements. The costs to be incurred prior to July 1 include payments to the Construction Manager for pre-construction services, stadium-related hard costs, permitting, and testing and inspection services. It was agreed between the parties that the estimated \$20.5 million would be split between the Team (\$10 million), the County (\$7 million) and the City (\$3.5 million). The \$7 million and \$3.5 million figures represent not-to-exceed amounts for designated County and City costs. Additionally, as mentioned previously, if the termination occurs prior to June 1, the reimbursable interim costs above would be reduced for the County and City.



The not-to-exceed amounts would be split as follows: Team (\$14 million), County (\$4 million), and City (\$2.5 million). If construction moves forward, the \$7 million will be reimbursed from the previously indicated County funding sources for construction of the ballpark, funding that we would have spent anyway had the bonds been issued concurrent with approval of the Stadium Agreements. If the Agreements are terminated, the County will look to available PST or CDT funds that would otherwise have been provided to the City for the baseball project if it were to have gone forward to reimburse the Team for costs incurred up to the termination date.

#### **Delegated Authorities**

Attachment I details the delegated authorities for all the agreements being considered.

#### **Background**

Miami-Dade County has been actively pursuing and committed in its efforts to develop a new ballpark for the residents of Miami-Dade County and the Florida Marlins for close to ten years. During this time we have evaluated numerous sites in multiple jurisdictions and have requested funding assistance from the state on several occasions. In March of 2005, the County, City and Team executed a Memorandum of Understanding for the development of a new ballpark at the Orange Bowl site. That effort ultimately fell short when the state denied the final funding needed for the project. In 2006, the County and City of Hialeah worked with the Team and Major League Baseball (MLB) on assessing a site just west of I-75 and east of the Florida Turnpike. This site presented some major challenges, including the structure of a proposed tax increment financing district to provide funding for the project and the assembly of the required land to support a suburban ballpark. In late 2006, County staff identified a site located next to the Stephen P. Clark Government Center. The Government Center site had many positive attributes, namely its direct downtown location and easy access to mass transit. However, it was not possible to relocate the new Children's Courthouse that is planned for that site. From a cost standpoint, the site required major, costly utility relocations, and, in addition, had a constrained construction and staging area that presented other complications. The University of Miami's decision to leave the Orange Bowl and move its football program to Dolphin Stadium last year, reopened the Orange Bowl as a viable site for the new ballpark. Additionally, on October 16, 2007, the Board approved R-1173-07, which directed the administration to identify funding sources and to negotiate a BSA with the Team and the City of Miami for a site to be located at the former Orange Bowl site. The County, City, Team and MLB resumed negotiations of the BSA, which was ultimately approved by both the County and City Commissions on February 21, 2008. The BSA set the basic terms, conditions, and obligations that served as the construct for the final Stadium Agreements that are before you today for approval.

Since approval of the BSA, the parties have initiated the various site development requirements outlined in the BSA, such as demolishing the former Orange Bowl, conducting site and utility surveys, initiating the re-plat of the property, conducting environmental assessments and geo-technical studies, initiating the preliminary steps to obtain a Major Use Special Permit (MUSP) from the City of Miami, and conducting the preliminary architectural/design work necessary to ready the ballpark for construction when these Agreements are finally approved, all while continuing to negotiate the Stadium Agreements and defending a lengthy, time-consuming lawsuit.

A decision to provide funding to support the construction of a new stadium for the Miami Marlins is not a decision to oppose funding for the Convention Center on Miami Beach. Throughout the various efforts to negotiate funding for a stadium, provisions have been made to provide funding to support the Convention Center, the single most important engine for the tourism industry. In 1996, an amendment was made to the interlocal agreement with Miami Beach related to the South Pointe Redevelopment District and the distribution of CDT revenues. This amendment provided for up to a \$4.5 million annual payment from CDT to Miami Beach, extended the life of the redevelopment district, and further

provided for a \$46.5 million payment to Miami Beach for Convention Center improvements. In 2001, a second amendment to that agreement extended the term of the \$4.5 million annual payments for as long as debt for the Performance Arts Center (PAC) remained outstanding, provided an additional \$15 million payment to Miami Beach for Convention Center improvements and authorized that a \$50 million payment would be made to Miami Beach should CDT receipts not be dedicated to a baseball stadium by the end of 2003. In 2004, a final amendment was made that extended the term of the \$4.5 million annual payment for as long as either PAC debt or debt related to a baseball stadium was outstanding (approximately 2046), eliminated the requirement that the \$50 million payment be made but obligated the BBC program to include \$55 million for the Convention Center, and increased South Pointe-related incremental payments to 95 percent of the revenue through 2017, up to \$45 million. The net present value of all of these revenues exceeds \$250 million. The purpose of the amendments to the interlocal agreement was to allow for funding for the PAC and the baseball stadium project while at the same time recognizing the importance of the Convention Center. As you can see, sufficient support to the Convention Center is available to fund planned improvements.

The construction of a baseball stadium will have a positive impact on our community. An economic analysis of the impact of the construction of a baseball stadium shows that a significant proportion, but not all, of those expenditures should involve local vendors and local labor. The economic impact projects that approximately 78 percent of the total construction costs representing local purchases of goods and services, and 40 percent of the design, engineering and other soft costs are expected to be provided by local vendors. The local purchases of goods and services directly associated with the construction of the ballpark during the development period are projected to support an average of nearly 3,300 employment positions per year. Two thousand fifty (2,050) of those projected jobs are directly supported by the construction activity. The construction of the ballpark is also expected to generate \$357 million in labor compensation (includes employer provided benefits) during construction, representing \$45,200 in average annual compensation per employment position generated. Gross business revenues ("gross economic output") of \$816 million are generated during the construction period, of which \$455 million is County GDP.

### **Project Budget and Funding**

#### ***Baseball Stadium Construction Budget***

The estimated cost for the design, development, and construction of the ballpark remains at \$515 million. As you are aware, it was announced in early December 2008 that the previous targeted completion date of April 2011 was pushed back a year until 2012. The 2011 construction schedule was based on an accelerated 29-month construction schedule. By moving the completion date to 2012, the Stadium Developer was able to lengthen the construction schedule to 34 months, decreasing acceleration, staffing, and overtime costs built into the shorter construction period and allowing the stadium project budget to remain at the same level as previously planned. Thus, the funding contributions from each party are the same as that approved in the BSA and are shown in Exhibit K to the CAA and discussed further below. Additionally, given the competitive nature of the construction industry in today's stalled economy, we expect to see every favorable pricing on labor, materials, and supplies.

Our owner's representative, URS/IFG, has reviewed the design of the project and construction estimates and concluded that they conform to the reasonable expectations for similar ballparks, that the construction schedule is reasonable and that the project budget appears to be reasonable and sufficient to complete the project. They also indicated that the two firms engaged for this project, Hunt/Moss and HOK Sport, have significant stadium and arena experience, including Major League Baseball retractable roof stadiums.

***City Contribution to Project***

The City's contribution to the stadium construction budget is \$13.5 million. The City is contributing the land (approximately 14 acres of the former Orange Bowl site for the stadium, as well as a 3 acre plaza area) and has paid for all costs associated with the demolition and disposal of the existing Orange Bowl stadium debris (final cost was \$2.1 million). The City is also funding and constructing the parking structures and surface parking lots immediately adjacent to the stadium premises, sufficient to provide approximately 5,500 parking spaces, consistent with the City Parking Agreement accompanying this memorandum, at an estimated cost of \$94 million. Under terms negotiated since the agreements were last distributed to the Board, the City's \$94 million contribution to the Parking Facilities is now capped – it is only responsible for the construction of as many parking spaces as that \$94 million will yield. The revenue stream required by the City to leverage the \$94 million necessary to construct the parking structures and surface lots will be provided from CDT funding provided in an Interlocal Agreement between the City of Miami and Miami-Dade County to be approved as a companion item on today's agenda, and from revenues generated by the City from the sale of the parking spaces to the Team once the facilities are operational. This Interlocal is necessary in order to provide the County with the maximum flexibility to issue CDT bonds to meet its funding obligations. The City will also be contributing annual payments of \$250,000 to the Capital Reserve Fund.

***Team Contribution to Project***

The Team's contribution to the stadium project remains at \$155 million, \$154 million towards the stadium and \$1 million for public infrastructure costs, including design. As approved in the BSA, the Team will privately finance \$120 million of the stadium and infrastructure construction costs and make annual rent payments to the County, beginning in the first operating year, with an initial payment of \$2.3 million per year, now being adjusted to be increased by 2 percent annually through the initial term of the Agreement. As a result, the County will issue an additional \$35 million in debt secured by a covenant to budget and appropriate legally available non ad valorem revenue, recognizing the Team rent payments will more than cover the annual required debt service amounts on such additional debt. In fact, the Team rent payments actually have an estimated net present value of \$44 million. We intend to use the excess funds to help cover County ballpark project related costs.

Beyond the funding for the stadium and in addition to the rent payment, the Team will also be providing annual payments of \$750,000 to the Capital Reserve Fund. Those payments will total at least \$26.25 million through the term of the Operating Agreement and will be used for capital repairs and improvements to the major components and systems of the ballpark.

***Public Infrastructure Funding***

One of the unknown project costs at the time of the BSA approval was that of the public infrastructure work required of the County and the City. At that time, interest yields were substantially higher, and it was anticipated that interest earnings from the stadium bond proceeds would entirely fund the County's portion of the public infrastructure work, along with other project management costs. It is fortunate that our original rough estimates for the relatively low cost of the public infrastructure work have been on target. However, given that we will likely not be selling bonds until the summer, and the very low interest rates for invested funds, the amount of interest earnings will be significantly less than anticipated last year. It became necessary to look at alternative funding sources for the public infrastructure work to supplant interest earnings. Our funding plan is described below.

The County and City have agreed to a Scope of Work, attached to the CAA as Exhibit G, for public infrastructure that totals approximately \$16.6 million, which will be split equally between the two parties. In addition to the public infrastructure costs, approximately \$6 million is allocated for general conditions,

contingencies, and minor environmental mitigation costs. Finally, \$1.2 million of allowances for potential government-requested scope changes is included in Exhibit G. If executed, these allowances would be funded exclusively by the City. The public infrastructure scope includes the installation of replacement water and sewer lines, stormwater system improvements, the provision of electrical service to the site, road improvements and necessary sidewalks, lighting and traffic and signalization on roads immediately adjacent to the future baseball stadium. The City and County have agreed to share these costs and any cost increases and overruns not covered by the Team equally and the programmed cost to the County will be approximately \$10.837 million. Comparatively, the Minnesota Twins ballpark, currently under construction, has a public infrastructure budget of \$65 million, while the two stadiums set to open in New York City incurred hundreds of millions of dollars in public infrastructure work. The County's portion of the public infrastructure work is anticipated to be funded from a combination of sources including bond proceeds, interest earnings on project bonds, eligible funding available from the Water and Sewer Department, and, if needed, unrestricted tourist tax fund balances or covenant to budget and appropriate County debt for which annual payments would be funded by Team rent payments.

#### ***Project Management/Oversight Funding***

In order for the County to properly manage and perform its obligations under these Agreements, there are certain costs, budgeted at approximately \$4.3 million that will be incurred by the County during the construction phase of the project. Owner's bond counsel and representative services have been procured in order to assist the County during the now-completed negotiations phase, the financing analysis, and to provide construction expertise/oversight during construction of the stadium to ensure the County's interests are protected (\$2.6 million). The County Inspector General has been designated as the Independent Private Sector Inspector General (IPSIG) for the duration of this project (\$1 million), as required by County Code. Oversight of the project by County staff will be required throughout the duration of the project to make day-to-day decisions on behalf of the County and for general oversight of the County's interests (approximately \$700,000). The major project management costs mentioned above will be funded from bond interest earnings and other bond funds as described for public infrastructure costs.

#### ***Other Funding Obligations***

The County and the City have committed to ensure the ballpark is LEED-certified, with the goal of obtaining a LEED Silver designation, as required by the County's Sustainable Buildings Ordinance. An improvement from the BSA, was the Team agreeing to cap the County and City's total exposure to incremental LEED costs at \$3.5 million, to be split (\$1.75 million each for the County and the City). LEED costs will be funded from the same sources as those supporting public infrastructure costs. The County also has an annual payment obligation of \$750,000 after the stadium opens through the life of the Stadium Operating Agreement to jointly fund the Capital Reserve Fund along with the Team (\$750,000 per year) and the City (\$250,000 per year), as mentioned before.

With any large complex project there are risks, which have been, in our judgment, mitigated to the greatest extent possible. While the risk of governmentally-caused overruns has not been completely eliminated, concessions by the Team have greatly reduced the County's exposure, limiting those risks mostly to actions that are under the control of the County. For example, actions that require the County to review and execute documents, approve permits, meet deadlines to review design documents, etc., are all actions that if properly managed will not subject the County to exposure for delaying the stadium construction. Nevertheless, in order to ensure that an immediate source of funding is available to deal with situations that require additional funding beyond those sources identified in this memorandum, a general reserve of \$5 million has been established. I reiterate that, other than the funding being provided for this project, assuming Hunt/Moss is approved by the County and the City as the

construction manager for the public infrastructure work, the County has an extremely limited role in the actual design and construction of this ballpark and the public infrastructure. Consequently, proper management of the deadlines required to be met by the County in reviewing and executing required documents, granting approvals, and approving any permits, will ensure that we are performing our role properly and ensure we avoid any governmentally-caused overruns.

### **Stadium Agreements**

#### ***Construction Administration Agreement (CAA)***

Building a baseball stadium is an incredibly complex proposition, requiring the interaction of all the parties, their staffs, their contractors and sub-contractors and numerous peripheral agencies. After intensive negotiations, however, I believe we have reached agreement on a plan that does what our County team always envisioned, one that allows professionals to build the stadium with a fair division of public and private funding, backed by the strongest possible protection against unforeseen costs.

The CAA is by far the most complex of the five stadium agreements, encompassing the responsibilities and obligations of each party - the County, City, and Stadium Developer - from the planning and site development phase all the way through construction of the ballpark. As part of the CAA, the Board is considering the waiver of formal bid procedures for selection of Marlins Stadium Developer, LLC as the developer for the project, thus requiring a two-thirds vote of Board members present. As the stadium developer, the Team is responsible for and has already competitively selected the construction manager (Hunt/Moss) and selected the design professionals (HOK Sport), who will be designing and constructing the ballpark.

As was discussed previously, the stadium is to be located at the former Orange Bowl site. It is proposed as a 37,000-spectator, 927,000 square foot, natural grass playing field, retractable roof stadium. The footprint of the ballpark and accompanying plaza area total approximately 17 acres. The Orange Bowl property is currently owned by the City of Miami, but the 17 acres mentioned above will be conveyed to Miami-Dade County, which will then own the land and the stadium structure.

As mentioned, HOK Sport (HOK) is the primary architectural and design firm that has been selected by the Stadium Developer to provide the architectural and design services necessary for the design and construction of the baseball stadium and the public infrastructure work. HOK is world renowned for designing stadiums, arenas, and other sports facilities, and has been involved in almost every Major League Baseball ballpark constructed in the last 15 years. A 5.81 percent CBE A/E goal was assigned for the stadium and public infrastructure work from the SBD Review Committee.

MLB Ballparks Designed by HOK Sport since 2000		
Team	Ballpark Name	Year Opened
Detroit Tigers	Comerica Park	2000
Houston Astros	Minute Maid Park	2000
San Francisco Giants	AT&T Park	2000
Pittsburgh Pirates	PNC Park	2001
Cincinnati Reds	Great American Ballpark	2003
Philadelphia Phillies	Citizens Bank Park	2004
San Diego Padres	Petco Park	2004
St. Louis Cardinals	Busch Stadium III	2006
Washington Nationals	Nationals Park	2008
New York Yankees	Yankee Stadium	2009
New York Mets	Citi Field	2009
Minnesota Twins	Target Field	2010
Florida Marlins	Marlins Ballpark	2012

In addition to retaining HOK, the Stadium Developer competitively selected the joint venture of Hunt/Moss Construction to serve as the construction manager for the project. Hunt/Moss is also world renown in arena, stadium, and sports facility construction, with extensive experience in retractable roof stadiums, including Chase Field, Miller Park, and Safeco Field. The selection process by the Stadium Developer for the selection of Hunt/Moss mirrored a County selection process. Prior to advertising the Request for Qualifications and Request for Proposal, the Stadium Developer requested CSBE and SBE goals on the pre-construction services portion of the contract. Such goals were assigned by the Review Committee at 8.49 percent and 6 percent, for CSBE and SBE, respectively. Subsequent to the above-referenced selection process, the decision was made to also have Hunt/Moss perform the public infrastructure work for the project as well. Additionally, as was included in the RFQ/RFP documents, the Stadium Developer and Hunt/Moss will be required to comply with State and County rules applicable to the bidding and construction of publicly-owned and/or publicly financed facilities, including, but not limited to CSBE, SBE, CWP, and Responsible Wages programs. To be very clear, the goals mentioned above were only for preconstruction services, the Department of Small Business Development (SBD) will recommend further goals on each construction trade package for the baseball stadium and the public infrastructure work. SBD will also provide at least one full-time staff person to monitor and ensure compliance by the Stadium Developer with the County programs mentioned above. The Stadium Developer and MLB have agreed to contribute one-third each toward the cost of this dedicated staff person for the project, with the County covering the other one-third. Since the previous distribution of the Agreements, the County has also agreed to designate to The Review Committee one member from the City, who will participate only in regards to recommending goals for ballpark and public infrastructure work.

With the Architect and Construction Manager hired, work began on developing the Schematic Design Drawings and Schematic Design Construction Estimate in July 2008. These were received by the County on November 19, 2008. At each level of design (schematic, design, construction) documents, the County has review rights over said documents to ensure they are consistent with the Project Program Statement attached as Exhibit D to the CAA. Our Owner's Representative, URS/IFG,

reviewed the Schematic Design Drawings and Construction Estimate provided in November, and made the following observations:

- 1) The Project Program Statement approved in the BSA was reduced by 41,000 square feet to achieve the \$515 million stadium construction budget (the 41,000 square feet was adjusted from the overall floor plan by making slight adjustments to areas such as kitchens, retail areas, reductions in suite sizes, club lounges, media/broadcast facilities, clubhouse facilities, janitorial and event staff facilities, and lobbies for premium seat holders. These adjustments are minimal and will not impact the baseball fan experience at the stadium,*
- 2) The drawings and specifications conform to reasonable expectations for similar ballparks,*
- 3) The projected 34-month construction schedule (substantial completion by March 1, 2012) is reasonable, but design activities are being compressed to meet such deadlines, and, will require disciplined schedule management and coordination by the Marlins and their project team,*
- 4) The project budget appears to be reasonable and should be sufficient to complete the project, subject to successful incorporation of the proposed value engineering,*
- 5) The HOK and Hunt/Moss team have significant stadium and arena experience, including retractable roof stadiums and extensive experience working with MLB and MLB franchises.*

The next phase of design will be completion of the design and development drawings by HOK. These drawings should be received in early April 2009, with application for foundation permits expected shortly thereafter. Assuming the project remains on schedule, the next major milestone will be the completion of the MUSP, which is essentially approval of the zoning for the project by the City of Miami. The MUSP hearing is currently scheduled for April 16, 2009. Approval at that time would clear the way for a July 1 construction start date.

As mentioned previously the County and City have committed, in accordance with the County's Sustainable Building Ordinance, to achieving a LEED Silver Certification for the ballpark. The maximum exposure to the County and the City is \$1.75 million each. The Washington Nationals have achieved LEED Silver Certification for their new ballpark and the Minnesota Twins are seeking basic LEED Certifications as they complete their new stadium.

A Project Coordination Team will include representatives from the County administration as well as the Board of County Commissioners to attend project status meetings lead by the Stadium Developer, to provide updates to all aspects of the project.

The Art in Public Places Program will apply to this project. The preliminary estimates call for \$7.5 million to be set aside within the \$515 stadium project budget for public art. The Department of Cultural Affairs and the Stadium Developer have already begun meeting to establish potential themes for the ballpark.

With regards to the Sales Tax Procurement Program, the County has submitted its request to the State Department of Revenue (DOR) for approval of our sales tax exemption procedures. We have had numerous discussions with DOR leading up to submittal of our application and during their ongoing review process and are confident that approval will be granted. The initial \$515 million stadium budget assumes \$4.4 million in savings from the sales tax procurement program. Savings achieved beyond the \$4.4 million will accrue to the stadium budget. The benefit of the savings is to the project itself. If the stadium ends up on budget or under budget at the end of construction, any savings beyond the \$4.4 million generated from the program will be deposited into the Capital Reserve Fund that will be established for major stadium repairs and renovations. Conversely, if the stadium costs exceed the budget any extra savings generated from this program will help offset the Stadium Developer's cost overruns. The County's role regarding purchased materials is extremely limited, therefore, so too is any

cost exposure. The developer is responsible for identifying vendors, selecting materials, writing specifications for materials, obtaining quotes, and so on. The County's responsibility is to simply process the purchase order provided by the developer. Liability for procured items is built into the builder's risk insurance policy provided by the stadium developer. A technical change regarding this program has been incorporated into Exhibit J to clarify the County would be directly invoiced by vendors to purchases made under the program.

As was touched upon earlier in this memorandum, with any large complex project there are associated risks, all of which have been, in our judgment, limited to the extent possible. I also stated earlier that the County, while providing a majority of the funding for the stadium, has a limited role in the actual design and construction of this ballpark. Undoubtedly, as owners of the building, we have a vested interest in ensuring a successful project that is built on time and within budget. However, we also understand that the County is not in the business of building ballparks. There is a first-class team of architects and construction professionals who have extensive experience building these facilities who will be in control of the site when construction begins. We do not want to slow down progress of the stadium, but we do want to have our owner's representative and the necessary oversight on site to stay on top of issues and protect the County's interests.

When the BSA was approved, it was always understood that the County and City would pay for and perform the public infrastructure work. However, it was not so apparent at that time the extent to which the public infrastructure work would affect the project timeline, and, ultimately the level of risk exposure to the County and City. The Team also recognized that there are significant advantages to having the same construction manager build the stadium and perform the public infrastructure work on behalf of the County and City. Most importantly for the Team, shifting complete control of the construction schedule back to the team, allows significantly more flexibility in arranging/scheduling activities that otherwise would have depended on contractors under the control of the County or City to complete on time. For the County and City, and as is now written in the CAA and provided the County and the City approve Hunt/Moss to serve as the construction manager for the public infrastructure, the possibility of being assessed a governmentally-caused overrun as a result of delays in performing the public infrastructure work has been virtually eliminated as have any delays caused by private utilities, such as Florida Power and Light. We have significantly reduced potential risk exposures throughout the negotiations. While I cannot ensure that there will never be an overrun, or a contractor will never accuse the County or City of having caused them a delay, we have significantly minimized the risk to a level that I feel is manageable.

### ***Operating Agreement***

Whereas the CAA will be the primary focus of this project for the next three years during the construction phase, the Operating Agreement will come into play after construction of the ballpark is complete. It establishes the terms and conditions by which Marlins Stadium Operator, LLC (Operator) will operate and manage the ballpark for the duration of the agreement, which coincides with the term of the stadium related debt or 35 years, whichever is longer but in no event later than 2052. This virtually guarantees at least 35 more years of Major League Baseball in South Florida.

While the County will be the owners of the ballpark, the Operator will be in charge of all of the day-to-day operations of the ballpark, and all costs associated with the management of the ballpark, including maintenance and repairs, security, staffing, scheduling and contracting for events, ticket sales, insurance, concessions, etc. As such, the Operator will receive stadium-generated revenues, including ticket sales, concessions, suite licenses, advertising, broadcast rights, signage, and so on. Following a public hearing today pursuant to Section 2-1 of the Miami-Dade County Code, Rule 9.02, the Operating Agreement also authorizes the conveyance of naming rights for the ballpark premises to Marlins



Stadium Operator, LLC. Any naming agreement must be approved in writing by the County Representative and cannot be associated with tobacco, adult entertainment or guns. In consideration for the granting of such rights, among other things the Operator will provide an initial \$2.3 million annual payment to the County upon the first Operating year that will be increased by 2 percent each year throughout the initial term of this Agreement.

The County is entering into these Agreements for the purpose of creating a venue that can be enjoyed by the residents of Miami-Dade County, serve as an economic engine for the urban core area, and, dove-tailing with those benefits, keep the Marlins in South Florida with a franchise that, due to the new stadium, can now generate the revenues needed to obtain and retain a high caliber player roster that will bring better attendance to Marlins games, thus helping create a more successful, stable franchise. The County successfully demanded numerous improvements to the deal since the BSA was executed, including more public access to stadium events and nearly unfettered use of the stadium for public events during the off-season. Additionally, as was the case with the Team's contribution to the stadium construction, this Operating Agreement is not substantially different than most other Operating Agreements executed between Major League Baseball teams in recent years. In almost all cases, the Team is the primary operator of the facility and most stadium-generated revenues go to the Team, as shown in the table on the following page.

Allocation of Stadium Revenues in Various Major League Baseball Operating Agreements/Leases

<u>Team</u>	<u>Diamondbacks</u>	<u>Mariners</u>	<u>Astros</u>	<u>Brewers</u>	<u>Padres</u>	<u>Reds</u>	<u>Twins</u>	<u>Pirates</u>	<u>Phillies</u>
Stadium Owner	Maricopa County	King County	Harris County	Shared	Shared	Hamilton County	Hennepin County	Allegheny County	City of Philadelphia
Concession Revenues	100%	100%	100%	100%	100%	100%	100%	100%	100%
Naming Rights	Shared	100%	100%	100%	100%	100%	100%	100%	100%
Parking Revenues	100%	100%	100%	100%	100%	100%	100%	100%	100%
Signage	100%	100%	100%	100%	100%	100%	100%	100%	100%
Suites	Shared	100%	100%	100%	100%	100%	100%	100%	100%
Revs from Non-Baseball Events	County	Shared	Team	Team	Team	Team	Shared	Team	Team
Day-to-Day Operating Expenses	Team	Team	Team	Shared	Shared	Team	Team	Team	Team

The Operator will also be responsible for costs associated with providing off-duty public safety staffing at the stadium. This was a topic of great interest to all members of the Board during the approval of the BSA, and you may recall that a report was submitted to the Board in April 2008 outlining the agreed upon position of the County and City administrations on this issue. The language from that report, which basically provides for "curb-in" staffing on the Stadium Premises by Miami-Dade Police Department (MDPD), and "curb-out" staffing by the City of Miami (outside the Stadium Premises), for police off-duty services, and, joint provision of fire rescue off-duty services by both Fire Departments at the stadium, is incorporated into this Agreement.

For Community Event Dates, the BSA provided for a total of eight days each for the County and City throughout the entire year. The final Agreement negotiated between the parties was improved and calls

for unlimited use for Community Events during non-baseball months, in addition to of four events for the County and four events for the City during baseball season.

As part of its civic responsibility to promote and contribute to charitable, educational and community organizations, the Team will actively promote its Florida Marlins Community Foundation, maximizing benefits for inner city youth programs. These include rebuilding youth baseball infrastructure through Major League Baseball's various charities and programs, focusing on development of aggressive youth programs, requesting and encouraging its players to make public appearances in support of education, youth sports, or other public service activities, and providing attractive and meaningful programs designed to keep Major League Baseball games affordable for youth and the elderly in South Florida. Additionally, this includes providing at least 81,000 affordable seats for the youth and elderly in South Florida, and distributing at least 10,000 regular season individual tickets (increased by 5,000 from the BSA) on a complimentary basis each year. The County and City will have access to a shared "community suite" designated for charity or public use. Each party can designate 40 games (increased from 27 games each in the BSA) for use of the suite. When the suite is used by youth charities, the Operator will also provide food and beverages. Outside of these agreements, Major League Baseball has agreed to establish a National Baseball Academy to be located in the City of Hialeah to train baseball professionals, including players, management, umpires and facility maintenance professionals. The Academy will only be built if the Marlins stay in Miami-Dade County.

A significant change since the previous distribution of these Agreements requires the Team, through the Foundation, to make considerable contributions to local agencies. Through the term of the Agreements, the Foundation will be obligated to contribute at least \$500,000 a year. For the first 7½ years, \$100,000 of that contribution per year will be donated to the Park Foundation of Miami-Dade County, Inc. and another \$25,000 of it will be donated to the City's Heart of Our Parks Fund. In addition to those monetary contributions, the Team will be required to build or renovate at least 39 public ballparks in the County. At least three of those ballparks must be located in each County Commission district, including at least 2 in each City Commission district. At least one ballpark must be built or renovated every year.

As stated earlier, the Capital Reserve Fund will be established for the purpose of providing a dedicated funding source for replacement, repair, and related capital improvements to the major components, systems, and equipment of the Stadium Premises. This Agreement provides for a collaborative annual approval of the Capital Reserve Fund budget as well as approval of the projects to be conducted each year, for the purposes of ensuring proper planning and management of the Capital Reserve Fund by all parties. Funds will be deposited into the Capital Reserve Fund by the Team (\$750,000), County (\$750,000), and City (\$250,000) every year over the term of this Agreement for repair and replacement of capital equipment. To the extent funds in the Capital Reserve Fund are insufficient to fund capital replacement needs, the Stadium Operator has agreed to fund the deficiency in operating years 1 through 10. During operating years 11 through 35, the parties shall jointly determine funding responsibilities of each party for such deficiencies.

Another significant change since the previous distribution of these Agreements requires the Team to make larger contributions to the Capital Reserve Fund. Specifically, the Team is now obligated to place into the Fund all its proceeds from certain non-baseball events held at the ballpark. During the first 10 years of the Agreement, the Team will contribute its revenues from the 11<sup>th</sup> through 15<sup>th</sup> non-baseball events. Beginning in Year 11, the Team will contribute its revenues from the 11<sup>th</sup> through 20<sup>th</sup> non-baseball events.

The Operating Agreement includes a labor peace agreement to be executed between any labor organization representing food and beverage concessions workers and the concessionaire of the stadium. The labor peace agreement allows for labor representation and seeks to prohibit any labor organization and its members from engaging in any picketing, work stoppages, boycotts, or any other economic interference with the concessions.

#### ***Assurance Agreement***

The Assurance Agreement serves as a backup pledge, or guarantee, from Florida Marlins, L.P. (the main owners of the baseball franchise) that the entity Marlins Stadium Developer, LLC (the developer constructing the ballpark on behalf of the owners of the baseball franchise) will meet all of its payment and performance obligations required under the CAA. This is necessary because the Marlins Stadium Developer is an affiliate created solely for construction of the ballpark and does not generate revenues other than those assigned to them from Florida Marlins, L.P., or other Team affiliates. As such, it is extremely important to have this guarantee that the Developer has the full faith and financial backing of Florida Marlins, L.P.

As an example, the CAA calls for deposit of the Team's stadium construction funding contribution by a certain time. If the Developer fails to make such contribution, the legal recourse of the County and/or City would be to Florida Marlins, LP to either make payment or ensure the performance obligations of the Developer, or, to make such payment or performance on the Developer's behalf. This example extends to other obligations of the Developer in the CAA, including the commitment to pay for all non-governmentally caused cost overruns, to establish the financial instrument guaranteeing the initial \$20 million in cost overruns, and to guarantee the Developer's obligations to establish the required payment and performance bonds required under the CAA. During negotiations it was agreed that further assurances from the Team were necessary to provide additional comfort to the County and City that the Team would come up with their financing when needed. As a further protection to the County, language providing for a subordinated lien on the Marlins franchise was included in the Assurance Agreement. This subordinated lien will become effective no later than 60 days after the date of the Assurance Agreement and remain in place until the Team has secured its financing for the project.

There have been no substantial changes to the Assurance Agreement since the previous distribution of the Agreements.

#### ***Non-Relocation Agreement***

In light of the significant financial investments being made by the City and the County for this project, it is extremely important that there is a contractual, long-term commitment from the Team to play baseball in the new stadium long after these Agreements are approved and the stadium is constructed. The Non-Relocation Agreement serves to provide that commitment. With certain specific exceptions related to casualty and other untenable conditions of the stadium, it provides for a minimum 35-year covenant from the Team to use the stadium as its home field for all regular season and playoff games throughout the Term of the Agreement (35 years or the term of the stadium debt, whichever is longer), to discontinue discussions or negotiations involving relocation of the franchise, and to change its name to the Miami Marlins prior to substantial completion of the stadium.

This Agreement also contains the "payment upon sale of Team" provision. The purpose of this provision is not to enrich the County in the event of a Team sale, but to provide an inducement to the Team not to sell the Team. Our objective is to keep the Marlins here for at least 35 years and to ensure the current owners do not make an immediate windfall profit on this transaction. During negotiation of the Stadium Agreements the terms of this provision were improved upon by increasing the maximum potential payout percentage and increasing the number of years where the County and City would be

eligible to receive a payment if a sale of the Team occurred. The payouts have been further improved upon, both by increasing the percentage and extending the term. The changes to this provision are shown below:

If the sale occurs in:	BSA Percentage	Prior Percentage	Current Percentage
Year 1	10.0%	18.0%	70%
Year 2	9.0%	16.2%	60%
Year 3	7.0%	14.4%	50%
Year 4	6.0%	12.6%	30%
Year 5	5.0%	10.0%	10%
Year 6	Not applicable	7.5%	7.5%
Year 7	Not applicable	5.0%	5%
Year 8	Not applicable	Not applicable	5%
Year 9	Not applicable	Not applicable	5%
Year 10	Not applicable	Not applicable	5%

### ***City Parking Agreement***

As part of the overall stadium project, the City of Miami has agreed to construct four parking structures and six surface lots, accommodating approximately 5,500 parking spaces around the stadium. The four parking garages would be located on the north and south sides of the stadium, and the six surface lots would be located on the east and west sides of the stadium on City-owned land that was formerly used as surface parking for University of Miami football games. The Team will purchase these spaces for each home game from the City of Miami at a pre-determined cost per space that will increase incrementally throughout the term of the City Parking Agreement.

The City is currently in the process of selecting their design team for the parking garages, and, expects to begin construction of the garages in early 2010. Initial plans for the garages include approximately 60,000 square feet of commercial/retail space. The City has budgeted \$94 million for the construction of the garages and is solely responsible for their planning, design, construction, and operation. As discussed above, changes since the previous distribution of these documents cap the City's contribution at \$94 million and ensure the City will not need build any more parking spaces than that \$94 million will yield.

### **Conclusion**

At the direction of this Board, I have worked for the past year to negotiate the requisite agreements in order to build a state-of-the-art baseball facility for the Miami Marlins to call home. These negotiations have not been easy, but I believe that the final documents comprise the best possible agreements to protect the County while providing an asset to our community that will be enjoyed by our residents for years to come. While financial concerns may remain, due to the present uncertainty of the economy, these agreements have been structured so as to minimize potential losses, but allow this important project to proceed. The main purpose of the majority of the sources of funding is to support such a project, which can support job growth through its construction and retention of critical jobs through the ongoing operations. If this Board is desirous of having a baseball stadium in Miami-Dade County and having the Miami Marlins in that stadium, this is my recommended plan for achieving that goal.

Delegated Authority and Approvals

Non-Relocation Agreement

The Mayor or Mayor's designee shall have the authority to:

1. Jointly with the City, consent to any action prohibited by the non-relocation covenants of the Non-Relocation Agreement (i.e., play all home games in new ballpark), except with respect to any consent or waiver that would allow the Team to permanently relocate.
2. Determine the validity of a request by the Team to establish a timeframe when an Alternate Site Condition is likely to end. The Mayor's designee has 5 business days to object to, or accept, the timeframe and resolve any disputes through binding arbitration.

City Parking Agreement

The Mayor or Mayor's Designee shall have the authority to:

1. Within 10 days of receipt, review and comment upon the Parking Design Documents to ensure conformity with the Parking Design Standards.
2. Grant written time extensions that extend deadlines or time periods up to 180 days, and that do not otherwise materially affect the rights or obligations of the Operator, County or City, as the case may be, under this Agreement.
3. Make any other required decisions and grant consents and approvals under this Agreement that do not create a financial obligation, cost or expense to the County that is greater than the County Mayor's delegated procurement authority and that do not violate, ignore or alter the substantive provisions of this Agreement.

Operating Agreement

The Mayor or Mayor's designee shall have the authority to:

1. Request and review Use and Service Agreements funded with funds from the Capital Reserve Fund.
2. Come to an agreement with the Operator on the signage that identifies Miami-Dade County both inside and outside the stadium. This is in lieu of the GOB signage rules.
3. Approve any "Naming Rights" to the baseball stadium for any Stadium Names that do not meet the following criteria: is a (a) Fortune 1000 company or any of its subsidiaries or their respective products, (b) bank, (c) cruise line, (d) airline or (e) nationally recognized beverage (including alcohol) company.
4. Negotiate with the Operator for the rent payment payable by the Operator to the County during any renewal term.

## ATTACHMENT I

5. Reserve Community Event Dates, execute community event use agreements, and reimburse the Operator for all costs and expense attributable to such community event up to the County Mayor's delegated procurement authority.
6. Review the annual accounting of all funds placed into the Capital Reserve Fund as a result of Stadium Event Proceeds.
7. Designate the County Suite for the 40 regular season games and approve and execute the standard Operator suite license agreement for the use of the suite.
8. Approve any "Necessary Improvements" that the Operator elects to lease or lease purchase any of the equipment and furnishings comprising the Baseball Stadium.
9. Approve Discretionary Capital Improvements requested by the Team that exceed the Capital Improvements Threshold Amount (which is \$400,000 in the first year and increased by 5% every year thereafter) and allow such Discretionary Capital Improvements to be funded from the Capital Reserve Fund.
10. Approve and execute an agreement with the City and the Operator that will govern, among other things, the disbursement procedures for the Capital Reserve Fund.
11. Consult with the Operator regarding the Operator's preparation of a budget for the Capital Reserve Fund for the upcoming year, and, along with the City, approve the Annual Capital Reserve Fund Budget.
12. Submit the annual property insurance policy provided by the Operator to the State Insurance Commissioner to determine reasonableness of the policy and to receive and approve notice of any material changes to the policy made throughout the year. Additionally, pursuant to Section 10.3 of the Operating Agreement titled "General Insurance Provisions," approve the Operator's selection of an insurance rating agency in the event A.M. Best & Company is not used.
13. Pursuant to Section 11.1 of the Operating Agreement titled "Damage or Destruction," approve any changes and alterations to the Stadium Premises after a Casualty when the Operator is restoring the property to a condition that is substantially equivalent to that existing immediately before the Casualty.
14. In the event of a casualty, approve the financial institution or other party selected by the Operator to hold any property insurance proceeds over \$2.5 million and to approve the agreement for such account.
15. Pursuant to Section 14.1 of the Operating Agreement titled "Operator Assignments," approve any sale, assignment, conveyance, transfer or pledge by the Operator of this Agreement or any of its rights under this Agreement.
16. Enter into a new operating agreement for the Stadium Premises, and any other necessary agreements, upon the same terms and conditions of this

Operating Agreement, with a "Secured Party" if the County and the City terminate this agreement with the Operator.

17. Jointly with the City, terminate the Operating Agreement upon the occurrence of any of the events listed in Section 17.5.2 of the Operating Agreement titled "Termination by Government Parties."
18. Authorize and execute amendments to the Operating Agreement, so long as those amendments (a) do not require Board approval, (b) do not violate, alter, or ignore the substantive provisions of this Agreement and (c) do not create a financial obligation, cost or expense to the County that is greater than the delegated procurement authority of the County Mayor.
19. Grant written time extensions that extend deadlines or time periods up to 180 days, and that do not otherwise materially affect the rights or obligations of the Operator, County or City, as the case may be, under this Agreement.
20. (a) Make any other required decisions, (b) authorize waivers, and (c) grant consents and approvals under this Agreement, that do not create a financial obligation, cost or expense to the County that is greater than the County Mayor's delegated procurement authority and that do not violate, ignore or alter the substantive provisions of this Agreement.

Construction Administration Agreement

The Mayor or Mayor's designee shall have the authority to:

1. Approve the use of any of the contingency funds in the Public Infrastructure Budget.
2. Approve the Design Documents related to the Public Infrastructure work within 10 days of their receipt.
3. Within 45 days after the date of approval of this Agreement, negotiate with the Construction Manager and the City the fee, general conditions amount, insurance costs, and the pre-construction services amount that will be paid for the Public Infrastructure Work.
4. Approve any value engineering recommendations made by the Construction Manager for the Public Infrastructure Work.
5. Within 10 days of receipt, approve any Public Infrastructure Work Change Orders.
6. Within 10 days of receipt, approve amendments to the Project Program Statement that a) result in the Target Completion Date to be missed, b) cause the Stadium Project Budget to be exceeded c) cause a public safety risk, d) eliminates materially important programmatic elements from the Project Program, e) alters the design intent of the exterior of the Baseball Stadium, f) causes Public Infrastructure costs to exceed Public infrastructure budget or cause delays in completing the Public Infrastructure work, and g) results in a Governmentally Caused Overrun not otherwise waived by the Developer.
7. Within 7 days of receipt, approve the Architect Contract and any other architectural services agreements. The Mayor's designee shall also have the authority to approve

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- any amendments to these contracts relating to Public Infrastructure Work if such amendment affects the County.
8. Within ten (10) days of receipt, review and approve the Schematic Design, Design Development Documents, and Construction Documents as well as any amendments to these documents.
  9. Within 7 days of receipt, review and approve the Construction Management Contract. The Mayor's designee shall also have the authority to approve any amendments to this contract if such amendment affects the County.
  10. Approve change orders within 10 business days that: a) cause the Substantial or Targeted Completion Date to be missed, b) cause the stadium project budget to go over, c) pose a public safety risk, d) Eliminate materially important programmatic elements from the Project Program Statement or alters the design intent of the exterior of the Baseball Stadium, e) causes a Governmentally Caused Overrun and the Developer has not waived in writing claims against the County for the Governmentally Caused Overrun resulting from the Change Order, f) causes Public Infrastructure Costs to exceed Public Infrastructure Budget or to be delayed.
  11. Make appointment(s) to Project Coordination Team.
  12. Jointly with the City and the Developer, agree on a Master Project Schedule by June 1, 2009.
  13. Within 10 days of receipt, consent to any amendment to any material milestone dates in the Master Project Schedule that would result in a Governmentally Caused Overrun or a Public Infrastructure Cost Overrun.
  14. Approve amendments which extend the Targeted Completion Date or the date set forth in the Master Project Schedule for Substantial Completion of the Public Infrastructure.
  15. Before the issuance of the Bonds, advance monies to the Developer from other County funds in order to reimburse the Developer for eligible Stadium Project Budget expenses and to fund future Stadium Project Costs in accordance with the Draw Down Schedule. However, before July 1, 2009, the Mayor's designee can only advance up to \$7 million.
  16. Within 3 days after receipt, approve any leasing of equipment or system components for line items in the Stadium Project budget for if such lease is in excess of \$7.5 million during construction. After substantial completion, the Mayor's designee has the authority to approve equipment leases as provided in the Operating Agreement.
  17. Distribute funds from the County funding accounts subject to receipt of, and approval of, a proper funding request.
  18. Review and approve insurance policies, as well as any material changes to the insurance policies.
  19. Approve changes and alterations to the Stadium Premises and the Baseball Stadium Design Documents in the event of a Casualty.
  20. Prior to July 1, 2009, terminate this Agreement without cause and/or for convenience.



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21. Take actions or make approvals that do not cause an increase to the County's budgeted contributions under this Agreement or are to be paid from a previously identified and approved allowance fund for the County.
22. Grant written extensions of time that extend deadlines or time periods by up to 120 days and that do not otherwise materially affect the rights or obligations of the Stadium Developer or Team Affiliate, the County or the City, as the case may be, under this Agreement.
23. Review, approve and consent, in writing, to (a) documents, plans, applications, and requests required or allowed by the Stadium Developer to be submitted to the Government Representative(s), the County and/or the City, as the case may be, pursuant to this Agreement, including the Design Documents and forms of the Architect Contract or Construction Management Contract and to (b) actions, events, and undertakings by the Stadium Developer or other Person for which consent and/or approval is required from the County.